

MEETING OF THE
DISTRICT OF COLUMBIA STATEHOOD
CONSTITUTIONAL CONVENTION

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Friday, May 14, 1982

10:37 a.m.

Ninth Floor Auditorium
10th and E Streets, N.W.
Washington, D. C.

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P R O C E E D I N G S

(10:37 a.m.)

CHAIRMAN BALDWIN: Would the assembly please come to order?

Mr. Secretary, would you call the roll.

MR. COOPER: Delegate --

MR. JACKSON: Excuse me, a point of information. I just want to know when the meeting has come to order of the body, that it does not mean they have accepted the proposal, does it?

SEVERAL VOICES: No. No, sir.

MR. JACKSON: Okay. All right.

MR. KAMENY: In this case, we are simply proceeding but it is not a full committee, for the record?

MR. JACKSON: Right. Right.

The Secretary proceeded to call the roll, as follows:

Delegate Baldwin, here; Delegate Barnes; Delegate Blount; Delegate Bruning --

MR. COOPER: Mr. Chairman, Delegate Bruning is present but phoning the other delegates. Shall I do on or wait for Delegate Bruning?

CHAIRMAN BALDWIN: Please just go on with the rollcall.

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The Secretary continued and concluded the call of the roll, as follows:

Delegate Cassell; Delegate Clarke, here; Delegate Coates, present; Delegate Cooper, present; Delegate Corn; Delegate Croft, present; Delegate Eichhorn; Delegate Feely; Delegate Freeman; Delegate Garner; Delegate Graham, here; Delegate Harris; Delegate Holmes; Delegate Jackson, present; Delegate Jones, present; Delegate Jordan; Delegate Kamony, here; Delegate Lockridge; Delegate Long; Delegate Love; Delegate Maguire, here; Delegate Marcus; Delegate Charles Mason, here; Delegate Hilda Mason; Delegate Brian Moore, present; Delegate Jerry Moore; Delegate Talmadge Moore, present; Delegate Nahikian; Delegate Nixon; Delegate Oulahan, here; Delegate Paramore; Delegate Robinson; Delegate Rothschild, here; Delegate Schrag, here; Delegate Shelton, present; Delegate Simmons; Delegate Street; Delegate Terrell; Delegate Thomas; Delegate Warren.

MR. COOPER: We have 17 delegates answering the roll.

CHAIRMAN BALDWIN: Delegate Bruning is on the telephone. Oh, he is present now.

MR. COOPER: Delegate Bruning.

MR. BRUNING: Here.

CHAIRMAN BALDWIN: There are 18 delegates present.

MR. COATES: Mr. Chairman.

CHAIRMAN BALDWIN: Delegates Coates?

MR. COATES: I am going to suggest that the record also indicate the time at which we were called to order, that is the time of this rollicall.

CHAIRMAN BALDWIN: The record will reflect the time.

Delegate Maguire and then Delegate Jackson and Delegate Rothschild.

MS. MAGUIRE: Is the motion that was previously made pending?

CHAIRMAN BALDWIN: There is no motion now.

MS. MAGUIRE: Okay. I would like to make a motion that we recess until 5:30 so that the delegates here can go to the phones and call other delegates to come back at 5:30 and see where we stand with other delegates joining us.

CHAIRMAN BALDWIN: The Chair has been calling delegates ever since 9:20 and it is now 20 minutes to 11:00.

MS. MAGUIRE: Do we have a report on where delegates have to come from --

CHAIRMAN BALDWIN: We have asked the delegates to come in, but so far we have eight that definitely would not

be here for part of today, and some coming in at 12:00 and some at 2:30 and some at 6:00.

MR. MAGUIRE: So we have no idea when a quorum would be made.

MR. JACKSON: Mr. Chairman, I --

CHAIRMAN BALDWIN: I understand that two are on their way, Love and Freeman and they should be here within 20 minutes or 30 minutes.

Delegate Jackson.

MR. JACKSON: I too am quite sympathetic. I can state for a fact that I was here at 8:30 and there was only one other delegate that was here and so I have more sympathy than anyone else here. But I do think that it would serve us better to wait until we can get a quorum to get people here.

I must also say that I know some people will speak strongly in favor of a more favorable attendance record, so they needn't be so concerned when they are here and the others are not here. I don't mind saying who, it doesn't bother me the least bit, but I do think, Mr. Chairman, that we set a dangerous -- we were somewhat mischievous the other day when only 13 people said they were going to be here in the first place, so it was a minority making a decision for

many other people. And if we were to start now and three or four people were on their way, we would have more debate when those three people got here than we would by just continuing to discuss for another 15 minutes.

MR. T. MOORE: Mr. Chairman.

CHAIRMAN BALDWIN: Delegate Talmadge Moore and Delegate Clarke, and Delegate Rothschild.

MR. T. MOORE: First of all, I agree with Delegate Jackson. I think we would set a dangerous precedent by going on without a quorum, and we may get some repercussions from those people who are not here. So I would like to also recommend that you give the people in charge of these drafts a little more responsibility. I believe that the delegates would respond to their committee chairmen and it would give them some responsibility because they can contact each one of the members on their committee personally and plead with them to come here.

CHAIRMAN BALDWIN: Delegate Clarke.

MR. CLARKE: For the purpose of discussion, I move that we declare, consistent and pursuant to our rules -- I am making this suggestion -- for putting something before us. I move that we declare an emergency is existent by virtue of the hour having passed and the workload ahead of us and that

we move at our risk and as the properly constituted quorum arrives and is assembled we ratify what we do.

MR. KAMENY: I second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we declare this an emergency situation and that we continue and once a quorum is present we ask them to ratify what we have done, so when they arrive we haven't actually adopted anything.

Delegate Coates and Delegate Rothschild and Delegate Brian Moore.

MR. COATES: Mr. President, I am not sure how to vote on this proposition. One of the things I am curious about is what constitutes ratification. Does it mean a reading and reconsideration of what tentative actions or conditional actions we may take? I am not clear on what constitutes ratification other than the opportunity to either approve or disapprove what we have considered and disposed of.

CHAIRMAN BALDWIN: That is exactly what it means, Delegate Coates. We understand that we have done it at our own risk, they may in fact then say no, I have an amendment to that, let's forget it all and let's start at zero.

Delegates Rothschild and Delegate Brian Moore and

Delegate Shelton.

MR. ROTHCHILD: Mr. President, I would speak against the motion for declaring this an emergency because I really don't find -- the only emergency here is the attitude of the delegates towards the convention. I feel that the convention, we have not seriously taken the task at hand in a proper way, and that we are unwilling to give ourselves the time we need to do the task but at the same time we are also unwilling to make the sacrifices to do the task in the time we have allowed ourselves to do it in. So I find it more a lack of proper attitude towards what we are doing, rather than an emergency and I am very unwilling to throw out more of our rules and violate more of our procedure in the sake of expediency. So I would definitely vote against it.

CHAIRMAN BALDWIN: Delegates Brian Moore and then Shelton.

MR. B. MOORE: Yes, I wish to speak in favor of the motion on the floor from Delegate Clarke regarding the emergency legislation or emergency action. Proper notice was given to all the delegates at least 24 hours ahead of time. There was a vote taken on when to meet and I think the number of delegates that are here have expressed and implemented their responsibility and I feel that we should not be

penalized nor the convention penalized or jeopardized by the lack of response on the part of some delegates. So I feel that we should move ahead under these difficult circumstances and I really do feel that it is an emergency situation and should act responsibly in this manner. There is a question of democratic rights and everything, but I think that stops when there is irresponsible actions involved here.

CHAIRMAN BALDWIN: Delegate Shelton.

MS. SHELTON: Well, I think that with respect to delegates that are not here -- with respect to the process, I think that what we will be doing will be gaining ourselves some time because we as delegates will have some idea of the sections which need to be amended or sections we can ratify and then we will have done a principal portion of the work with the understanding that there may be some changes, but at least a contingent of us have exercised our rights, there will at least be 17 of us who have already had an opportunity to speak and will not feel compelled to speak, we will know how we want to vote and that will at least facilitate the process when the other delegates come. So I wouldn't want to see a total loss of our time.

CHAIRMAN BALDWIN: Delegate Oulahan.

MR. OULAHAN: Mr. Chairman, I call for the vote.

CHAIRMAN BALDWIN: The question has been called for.

MR. COOPER: A point of information. Inasmuch as we are adopting this emergency type of procedure, I just want to know what margin of the vote does it take to adopt it. Does it take a majority? Does it take two-thirds? Does it take three-fifths? Does it take unanimity?

CHAIRMAN BALDWIN: It would take a majority, but I think that since almost a majority would not go along with it, I wouldn't want to waste our time if they do it, and I think we should then spend some time on where do we go from here, do we recess now, and what is what. As to your question, I want a simple majority.

MR. KAMENY: I second the motion and call for the question.

CHAIRMAN BALDWIN: The previous question has been called for. Those in favor of the Clarke motion, signify by a show of hands.

(A show of hands.)

MR. COOPER: Eight.

CHAIRMAN BALDWIN: Those opposed?

(A show of hands.)

MR. COOPER: Nine.

CHAIRMAN BALDWIN: The motion is lost.

Therefore I say to you, fellow delegates, as you know, according to Robert's Rules of Order, we should now immediately recess until at such time a quorum will be present.

Now, I for one will not sit here and I am sure that a lot of other delegates, so we should determine now what time you want to reconvene this meeting, because we are-- and I am sure a lot of us aren't going to sit here until 2:00 or 3:00 o'clock waiting for other people to come in. So now that you have acted, let's do it in a responsible fashion, and decide what time you want to reconvene this group.

Delegate Schrag.

MR. SCHRAG: Let me suggest, Mr. Chairman, since we have had our question period on this article, rather than waste time in a recess, since the Chairman of the Finance and Tax Committee, which is going to read next, is present, perhaps we might have a question and answer period with Finance and Tax at this time.

CHAIRMAN BALDWIN: I would also like to say that when some people do come in we will have a quorum, that is a very good question and we will now move to Finance and Taxation. Delegate Coates will read his article. We will have questions and answers, and it is a very good suggestion

from Delegate Schrag.

Delegate Coates. While he is coming to the podium,
Delegate Maguire.

MS. MAGUIRE: I just want to know if you have an
extra copy of this.

CHAIRMAN BALDWIN: No, I don't have an extra copy.
The machine is down and we can't even Xerox any at this
point. I asked for some copies for the press and they said
the machine was down.

Okay. How many delegates are in need of a copy of
Finance and Taxation?

We need at least five, but we will proceed though.
We will go off the record.

(Discussion off the record.)

CHAIRMAN BALDWIN: Back on the record.

. Delegate Mason.

MR. MASON: A few moments ago you mentioned the
names of two people who were known to be on the way. I would
also point out that Hilda was here, left for a speaking
engagement at the Van Ness Campus at the UDC and will return
immediately after she finishes there, so we know of at least
three people who should be here reasonably soon, so that the
people that are here now do not disappear. It seems to me

we could have a quorum.

CHAIRMAN BALDWIN: We will recess at 12:00 o'clock as we agreed to earlier and then reconvene at 1:30. So if there is a quorum then, we will have to deal with what happens at 1:30.

Fellow delegates, we would like to continue with the reading of the article on Finance and Taxation.

MR. COATES: Thank you, Mr. Chairman. The Committee on Finance and Taxation Proposal No. SC-1-5A0004, discharged from committee April 24, 1982, no prior action taken by the convention, circulated as of May 7, 1982.

Title: Finance and Taxation.

Section (blank) Fiscal Period. This fiscal period of the state shall be a period of 24 months and shall commence on the first day of October and shall end on the 30th day of September, except when otherwise provided by law, and shall also constitute the budget and accounting period.

Section (blank) The Budget. At a time established by law, the Executive shall submit to the legislature a balanced budget estimate for the next fiscal period, setting forth all anticipated expenditures and all anticipated income for all departments, agencies and subdivisions of the state, as well as the general appropriations bill or bills so

authorizing all anticipated expenditures and a bill or bills covering recommendations in the budget for all anticipated revenues.

The Governor may from time to time prepare and submit to the legislature such supplemental or deficiency budget recommendations as in her or his judgment are necessary, but only in consequence of laws enacted after transmission of the budget or otherwise in the public interest.

The proposed budget shall include a budget message which shall contain a multi-year plan for all departments, agencies and subdivisions of the state, a multi-year capital improvements plan for all departments and agencies of the state and its subdivisions.

The specific content of the multi-year agency plan and multi-year capital improvement plans shall be defined by law. The Executive budget shall be made available and summaries distributed to the public. There shall be established an independent entity to project revenue estimates for the ensuing fiscal period which projections shall be published and made available to the public.

Section (blank). Adoption of the Budget. Within the time period established by law, the legislature, after receipt from the Executive of the proposed budget and public

hearing shall adopt and transmit to the Executive the balanced budget for the State.

Section (blank). Budget Veto Authority. The Executive shall be empowered with line item veto authority on the budget. The legislature will have the power to override the Executive's veto, and such override shall not be effective unless it shall have been decided by two-thirds majority vote of those present and voting.

Section (blank). Expenditures. No money shall be withdrawn from the treasury except in accordance with appropriations made by law, nor shall any obligations for the payment of money be incurred except as authorized by law. The appropriations of each department, agency or subdivision states specified distinctly and the sum appropriated and the object for which it is made.

Section (blank). Borrowing. The state is limited incurring indebtedness to general obligation bonds for capital projects, revenue notes in an anticipation of revenues and negotiable notes in anticipation of appropriations. No local jurisdiction or political subdivision of the state shall be able to contract debt.

The legislature shall set the overall debt limit for general obligation bond indebtedness. Citizens have the right

to petition for referenda on capital projects, with the exception of capital projects related to public education. All indebtedness except general obligation bonds for capital projects must be retired within the succeeding fiscal period.

Section (blank). Debt Service Limitations. Long-term debt shall not be incurred to the extent that it requires the payment of more than 14 percent of total revenues of the biennial fiscal period.

Section (blank). Taxation and Taxing Power. The state legislature shall have the power of taxation. This power shall never be surrendered, suspended or contracted away except as provided in this constitution.

Taxing Power of Local Governments. Local governments within the state shall not have the power to levy taxes.

Tax Exemptions--Retail Sales. The state legislature shall not have the power to tax purchases of retail groceries and prescription drugs and other medicines. The term "other medicines" shall be defined by the legislature.

Tax Exemptions--Real Estate. Tax exemptions on real property not owned and controlled by the state or its political subdivisions and not used exclusively for public purpose may not be granted by the legislature except real property used exclusively for religious purposes or as

required by federal law. Private leasehold contracts or interests in land or property owned or held by the state or its political subdivisions shall be taxed to the extent of its interests.

Tax Bill. No tax shall be levied except in pursuance of law and every law imposing a tax shall be addressed in a separate bill; nor shall any matter, cause or whatever not immediately relating to and necessary for raising revenues in any manner blended with and annexed to a bill for imposing taxes.

Section (blank). Earmarking. Except as required by participation in federal programs or interstate compacts, the state shall not authorize the earmarking of funds for longer than two fiscal periods.

Section (blank). Legislative Post Audit. The legislature shall appoint an auditor to conduct post audits as prescribed by law. The legislature shall determine the auditor's term of office and rate of compensation. The auditor shall submit her or his reports to the legislature and to the Executive. The auditor's reports shall be made available and summaries distributed to the public.

Section (blank). Limitations. No appropriations shall ever be made from any public funds whatsoever in aid

of any religious creed, church or sectarian purpose, or to help support or sustain any private school, academy, seminary, college, university or other institution of learning controlled by any religious creed, church or sectarian domination or whatever, nor shall any grant or donation of personal property or real estate ever be made by the state or any of its political subdivisions to any religious creed, church or sectarian purpose whatever.

Section (blank). Misuse of Public Funds. Use of public funds directly or indirectly of the state, subdivisions or other public funds for any purpose not authorized by law shall be deemed a felony and shall be punishable as prescribed by law.

Section (blank). School Budget. The governing bodies of the schools of the state shall prepare for each fiscal period and submit to the government detailed estimates of expenditures and appropriations necessary for the maintenance and operation of the schools. The governing bodies of the schools shall submit as a part of their budget both full-term operating projections and full-term capital improvements projections. Shall submissions shall include a statement presenting qualitative and quantitative descriptions of the school's activities.

Section (blank). State Courts. Courts of the state shall prepare for each fiscal period and submit to the governor detailed estimates of expenditures and appropriations necessary for the maintenance and operation of the courts. Courts shall submit as a part of their budget both full-term operating projections and full-term capital improvements projections. Such submissions shall include a statement describing qualitative and quantitative descriptions of court activities.

That is the end of the reading of the article.

CHAIRMAN BALDWIN: Discussion? Questions?

MR. MASON: Question.

CHAIRMAN BALDWIN: Delegate Mason.

MR. MASON: On the section on fiscal period, for many years our fiscal year ended June 30th. The federal government changed that so as to end September 30th and the District Government went along with the federal plan. It caused great difficulty in the educational institutions, both the Board of Education and the university to have a fiscal year that began three weeks after school opened. I would be prepared to offer either two possible amendments. One is to change the whole thing back to June 30th, and the other would be to say that educational boards, the two educational boards

could set their own fiscal year independently of the rest of the state government. I think either one would solve the problem I have in mind, but I don't know which would be more acceptable to the committee or the other delegates. I do object to continuing the problem that we thrust upon ourselves by following the federal government and now if we are becoming a state I don't think we have to keep along with that.

MR. COATES: You anticipate in your comment the basic consideration of the committee, and that is to look as much like what presently is, both on the federal level and the District of Columbia. The committee did not consider the specific matter relating to public education agencies in the District of Columbia, so that represents for the committee new consideration and it would be open to your amendments, the consideration of your amendments.

MR. MASON: Might I ask which of the two possibilities I suggested would seem more acceptable to you, to change the whole thing to June 30th or to authorize the educational boards to have different fiscal periods?

MR. COATES: I would want to consult with our Committee on Education. I personally am not prepared to give any formal comment.

Delegate Brown?

MS. BROWN: I was looking at -- on page 8 -- I was looking at the section on legislative post audit. I think last night the legislation dealt with that. Would you recommend deleting that?

MR. COATES: I was not present at the point where that was considered, but consistent with the principle that we ought not to have needless duplication in the constitution, the --

MS. BROWN: I will find it so I can read it.

MR. COATES: Delegate Cooper, a member of the committee, wishes to respond more directly to the question.

MR. COOPER: In essence it is duplication but I think that the language set forth by the Committee on Finance and Tax is a little bit stronger and a little bit more public oriented inasmuch as this requires for the auditor to report not only to the legislature but to the executive as well, and it also purports that this auditor should report to the public as well because this report has to be made available in summary form and distributed and the full report has to be made available to the public; as was set forth in the legislature I don't believe those provisions were made.

MR. COATES: Delegate Bruning, who is also a member

of the committee, wishes to respond.

MR. BRUNING: I am not sure that we -- I would have to look to see if we included all of that. I know that Delegate Oulahan or -- I believe it was Delegate Oulahan or whoever made that amendment added the public notice part of it, so there was the uniformity. I don't think they are exactly, I don't think there is anything in contradiction.

MS. BROWN: That was discussed in the legislative section and it talked about a person could serve as auditor for two years. It also talked about post audit reports and I don't know -- I think that term was not used exactly that way but it was specific that the report would be made to the legislature.

MR. COATES: Delegate Jones.

MS. JONES: In the legislative article it says -- it tells who appoints the auditor, it tells -- and you say the legislature will determine his term of office and rate of compensation. It does not talk about, but it talks about the term of office. It talks about how he can be removed. The legislature talks about how he can be removed. Your article does go to the public when he submits his summary, but also as far as these can be meshed together in some fashion, the article on the legislature spells out his term,

he served until a new appointment, how he can be removed and that kind of thing, and then you go beyond that and talk about what some of his duties will be and who he is to submit reports to. I don't think the two articles are constant, and maybe we could look at both of these and --

MR. COATES: A critical concern to the committee was the requirement of distribution, a summary of the audit report distributed to the public.

Delegate Moore.

MR. T..MOORE: I don't see any inconsistency on this. I think this language here is more specific in detail as Delegate Cooper raised the issue. I think this is more or less complimentary language.

MR. COATES: Delegate Brian Moore.

MR. B. MOORE: Chairman Coates, I would like to ask a broad general question of you. You have to ask me that I am a novice in this financial and taxation area, so instead of asking a specific question in a certain area, I would like if you could briefly give me the general themes that you are trying to promote in this section. What general theme are you trying to give, more authority to one part of the government, more than others, or -- is there any two or three themes in the different sections that you are trying to -- or

what is different from the other constitutions, or is there any change historically from the way other constitutions have presented it, and things like that?

MR. COATES: The committee was quite concerned about the ability of the state to incur debt, deeming an absolute ceiling on debt as being undesirable in the constitutional document. It opted for an arrangement by which prevailing market conditions would impact upon the ability of the state to incur debt in the same manner that prevailing economic conditions impact upon the state's ability to liquidate debt, namely requiring that the state rely upon the commercial markets for borrowing, so that the controls normally obtaining in the commercial markets could also be controlling on the state's ability.

For example, if the state has a certain revenue problem because of a restricted tax base or revenues as determined by market conditions, that would then delimit or control the state's ability to incur debt because the commercial markets would be concerned to determine what the state's ability is to pay and repay, and based on that ability then it delimits what monies would be available to the state for borrowing.

So in the first instance the committee was concerned

to impose normal conditions, regular conditions prevailing in the commercial money markets on the state's ability to incur debt. It opted for a flexible formula, basically that which is now provided in the Home Rule Charter of limiting repayment of debt, both the principal and interest of 14 percent, which does give a specific percentage, it also allows flexibility because, as general revenues either decrease or increase at 14 percent as a matter of absolute dollar amount, this also increases or decreases, general revenues.

The committee also felt that it should extend the fiscal period from one year to two years. This would allow management to eliminate the incidences of deficit so that over a two-year fiscal period there would be less incidents of deficit spending in the government. To further accommodate that, the government can make use of revenue notes, their shortfalls in revenue, their problems in the collection of revenue as might be proposed by semi-annual payment of property taxes or cyclical periods of user fees that the state would be able using revenue notes or negotiable notes to provide for those shortfalls in revenue.

With respect to both revenue notes and negotiable notes, it is required that the state would liquidate any borrowings within the next fiscal period, so that there would

not be an accumulation of debt.

MR. B. MOORE: Is this unique in this country or are there other states that operate under the same fashion? Do you know?

MR. COATES: I'm sorry, I don't --

MR. B. MOORE: Do other states have the same flexibility, the same extended fiscal period?

MR. COATES: Well, let me defer to Delegate Croft. The majority of states have an annual fiscal period, a one-year fiscal period.

Delegate Croft?

MR. CROFT: Moving to this kind of fiscal period is something that has been more and more -- this is a method that has been advocated by experts in the field by public administrators, the constitutions being documented for some time and taking a long time to change, et cetera. There are -- I think there are now three states that do that, Hawaii amended its constitution when it updated its constitution, did it, but it is a process procedure that experts in the field have been recommending be done. The problem is that most state constitutions have spelled it out in extreme detail, the whole question around these things, and it becomes cumbersome to do it.

MR. T. MOORE: Because of the relatively changing economic picture then --

MR. CROFT: The changing economic picture, but it is also recommended as the most efficient way, as a more efficient way to handle these kinds of questions than, you know, the standard practice.

MR. COATES: In the cases where there is biannual fiscal periods, there is the tendency to have a year-end review, however it does not require further budget actions except with respect to supplementals.

Delegate Moore.

MR. T. MOORE: Maybe I am more confused. I thought that Finance and Taxation was just concerned with borrowing money and bank loaning institutions -- what committee handles that?

MR. COATES: The matter of fiscal institutions is being handled by Economic Development.

MR. T. MOORE: Economic Development. What about the income tax, the personal income tax, is that handled by another --

MR. COATES: The legislature has taxing authority and that encompasses personal income tax.

Delegate Croft.

MR. CROFT: May I respond to that. That is again now becoming more and more a standard practice which does not spell out every kind of tax possible. In the model constitution -- both in the model constitution and in the experts who testified before the committee, the recommendation is that you give the state legislature a broad authority to tax. The argument is that you can never foresee certain taxes because of certain economic changes that maybe become obsolete. Other sources for raising revenues that you may not have seen, when you wrote the constitution, may become apparent so the recommendation is now to give a broad taxing authority to the legislature, and leave that up to them to do.

MR. T. MOORE: Well, we will have a vehicle in case questions arise, what about my taxes, my taxes have increased, will the stock answer be that the legislature will determine this or what?

MR. COATES: That is correct, sir. The constitution provides a broad grant of tax authority to the legislature.

Any other questions? Delegate Rothschild.

MR. ROTHSCHILD: Thank you, Chairman Coates. I would like to ask several questions. One, in the referendum on capital projects, I would like to know whether the

committee considered, and if they did consider what was their opinion of having some type of a trigger factor on referenda so that it would automatically come into play above a certain level? This way it requires people to actually, as I understand it, they would have to go out and petition and on certain capital expenditures it may be advantageous to have an actual referenda come in automatically above a certain level. Was that ever considered and, if so, what was the committee's opinion about that?

MR. COATES: I will ask Delegate Bruning to respond to Delegate Rothschild. It was considered in the committee.

MR. BRUNING: Yes, we considered all sorts of way about dealing with capital projects, whether it should be a trigger based on the expense of the project, whether it should be a trigger based on legislative vote, i.e., two-thirds of the people making it not necessary, two-thirds vote of the legislature making it necessary to have a referenda, but if you pass it by less than half or less than two-thirds -- we worked out all sorts of ideas on that and none of them really flew. The problems in terms of an exact amount became one in part at least, if you put a specific figure, i.e., \$50 million project, is that the project would be funded at \$49,999,999, and then there could

be a supplemental or additional project added onto it, so there are a lot of ways that essentially an absolute figure can be played with.

That also is very hard to compute, that a project may start up very small and may have very, very, very major impact, although the initial cost may only be a couple of million dollars, i.e., maybe putting down the first subway line, the fact is that in terms of other supporting facilities and other tracks and stuff like that, it will later on down the road add up to multi-millions, maybe hundreds of millions of dollars.

So we just found that using an exact figure as a trigger was something that could essentially be played around with, just like an exact figure on debt, it can be played around with by some inventive bookkeeping. So we thought the best in the end, the best method on balance was to leave it up to a permissive referendum.

MR. ROTHSCHILD: Just personally, I am a little disappointed that there isn't some type of a trigger factor designed, that could have been a percentage of something, expected revenues over a period of time or whatever.

Another question I had was regarding that there will not be taxes, the legislature shall not have the power

to tax purchases of retail groceries, prescription drugs and other medicines. I know on the surface that it is a very desirable thing, but nevertheless in your overall tax pattern that may not always be a desirable thing. It may be advantageous to work out a system of credits and deductions in income tax, and so forth, that will actually raise more revenue and be easier on low-income people than by specifying now and forever in our constitution that there shall not be a tax on these items.

MR. COATES: Delegate Croft will respond to your second question, Delegate Rothschild.

MR. CROFT: Theoretically, providing tax credits theoretically has certain advantages over an exemption. However, if he goes to provide relief, immediate relief to low-income families, then you run into the practical problem. In other words, the tax credit comes once a year. In other words, people not paying the taxes, that happens immediately. In other words, people have to wait for that once a year period in order to get the tax credit and that poses certain practical kinds of problems.

Secondly, there is the problem of administering it, administering those kinds of credits, et cetera, et cetera. But I think the major problem is the question of the time lag

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between when the expenditure is made for the essentials and for when people get the tax credit, and I think that is a technical problem and I think that we found that the value question was more important in the sense that we felt that there were certain kinds of things that are absolutely necessary for human life and that certain kinds of losses in terms of revenue was more than would be compensated for by that value.

MR. ROTHSCHILD: Okay, one other -- just on that, it seems to me that there are ways of subsidizing or supplementing people and -- I am not saying that you are necessarily wrong, it just disturbs me a little bit that we are tying the hands of the state forever.

Again, you may be correct, but if the legislature made the decisions they would be able to at a later time be able to change it. Okay.

Another question I had regarding -- I will ask just one more -- regarding religious institutions. It seems to me a little bit contradictory. At one point in tax exemptions on real estate, you do say that there may be tax exemptions for religious purposes, but then on the section on limitations it says that there will not be support of religious institutions, and so forth. Is there a contradiction there

-

or what is the thinking? Why -- because essentially not taxing property of religious institutions, basically providing them with revenues, it is just a backdoor way of supporting religious institutions, essentially.

MR. CROFT: I would like to respond to that in two ways. First of all, providing religious institutions with a tax exemption is a long American tradition. I mean it is in almost every constitution we look at. And also what we have done is we have essentially said that their properties that are used for a religious purpose are tax-exempt. Properties that they would not be using for a religious purpose would not be tax-exempt, and that is a fairly standard practice. And there is a question on that that comes out of constitutional law again.

The Supreme Court has this kind of position on the taxing of religious property, which is essentially that there is no absolute -- in other words, the state is not prohibited from taxing church property, if it chooses to tax church property. There is a problem, however, of a commingling. For example, if the state would tax church property and the church went into bankruptcy, and the property question has been a Supreme Court ruling in Minnesota in which Burger issued not an opinion that is binding but Burger essentially

raised the question about whether taxing church property would ultimately lead to a commingling of church and state and a subversion then indirectly of the First Amendment right.

So essentially what we have done is carry the standard practice, carried the standard language which is essentially to exempt church property that is used for a religious purpose, with the state having the right to tax properties which are not used for a religious purpose.

MR. COATES: Delegate Baldwin. Delegate Baldwin hasn't spoken, Delegate Moore. Delegate Talmadge Moore, you have spoken at least once.

MR. BALDWIN: I notice some duplication and some inconsistencies, and I was wondering prior to debating whether or not your committee would straighten this out. At least this would save some time once we start debating, and I refer specifically to your section on post audit. Now, that section in fact was adopted last night by the legislature, almost verbatim. And I think if your committee could meet and decide, yes, this is a section that has been taken care of, then there would be no need to present that section.

The section that deals with -- I am trying to find the page. That was on page 8 that I just referred to, where it says "Legislative Post Audit."

MR. COATES: As I understand it, that is parallel to the legislative report, section 13.

MR. BALDWIN: Yes, it was.

MR. COATES: The committee would only be concerned that we provide for what in the committee's view is critical, making public and distributing to the public.

MR. BALDWIN: That was included in what we adopted last night.

My second point is also on page 8, beginning at the bottom, where it says limitation, that deals with the appropriations shall be made from any public funds for religious -- that section is in the Committee on Education and it appears rightly, so that is where it belongs. But I am not debating where it belongs. I think it if I were you I would check with the one on education and it appears to be pretty much what you have here, and either say to Mrs. Lockridge to keep it in, because as long as it is in our constitution it doesn't matter where it is, or you allow me to keep it in, and that way we could avoid that duplication.

The same thing applies to the school budget. I am saying I don't know whether it belongs in yours or theirs, but the Committee on Education also has a school budget and maybe if you took a look at the wording of theirs and either

keep it in yours or ask them to leave theirs. I think all of this would help us save some time and we do have some time to do this now before it comes back on the floor, if you could poll your committee and point these things out, especially the one that has been adopted, and you know that has been adopted. But if you just read the language, what education has as far as the school budget and as it relates to private schools, religious schools, the same kind of things you have here, our language -- I am on that committee -- is almost verbatim. I think if you and Mrs. Lockridge could get together and just decide where it belongs, that would help some of the debate.

Thank you.

MR. COATES: The Chair of Finance and Tax will be guided by the advice of Vice President Baldwin. With respect to our section on the budget, the school budget, I stand to be corrected. I do submit that there is a substantive difference and that is that the Committee on Education provides -- well, let us say prohibits the governor from adjusting the funding levels requested by the schools. The Finance and Tax provision does allow the governor to adjust the funding level. If that is the only consideration and if we can adjust that between the two committees, that will be

reflected in the report, the first reading from the Committee on Finance and Tax.

MR. BALDWIN: Okay.

MR. COATES: Our next question was from Delegate Moore, then Delegate Oulahan and then Delegate Mason.

MR. T. MOORE: I wanted to ask a question, Mr. Chairman, on page 9, line 4. Are you anticipating that perhaps in the next ten years or fifteen to twenty years, when education -- the words I am referring to real estate will ever be made by the state. I just wanted to know what that meant.

MR. COATES: That is shall never be.

MR. T. MOORE: Shall never be.

MR. COATES: Shall never be.

MR. T. MOORE: (inaudible)

MR. COATES: That is the implication of the constitutional provision, however, every constitution provides for funding by which it might be amended and, of course, you recognize as I do that that process has some more stringent conditions to be met other than simple legislative action. But it is the intent to be forever, a

MR. T. MOORE: On the same page, line 15, and it continues over on page 10, and the question concerns the

words "detailed estimates of the expenditures of the school budget." All the previous information that we have received is related to line items, and here you have detailed estimates, and I was wondering why you changed the process. Does the school superintendent submit a line item budget or this kind of --

MR. COATES: Yes, this provision would require that.

MR. T. MOORE: It doesn't say line items. It says detailed estimates, is that just a statement or is it the line items behind it, item by item, because -- do you follow what I am saying?

MR. COATES: Yes, I do. Detailed estimates by definition mean line item budgets, so that we provide for line items, however, the only action that the governor can take with respect to the school budget is to adjust the funding level request. He does not under this provision have the line item veto over the budget of the schools, and I might add nor would he have line item veto of budgets of the courts.

Delegate Oulahan.

MR. OULAHAN: Mr. Chairman, I have a question on two sections. The first is taxation, tax-exempt real estate,

page 7, lines 1 to 8. When the committee adopted that proposal, did they examine all of the real estate tax exemption statutes in effect in the District of Columbia?

MR. COATES: Yes, we did.

MR. OULAHAN: And am I right --

MR. COATES: We had expert participation in round table of Mr. William Cooke, from the D. C. Department of Finance and Revenue, who gave extensive testimony and also provided the committee with indeed a library of current D.C. law in the area of finance and tax.

MR. OULAHAN: And, Mr. Chairman, was it your intention -- let's just take Catholic University -- that the real estate of Catholic University, such as the chapel or the Shrine, which was used for religious purposes, should be tax-exempt but the real estate that Catholic University used solely for educational purposes would not be tax-exempt?

MR. COATES: That would be the case under this section.

MR. OULAHAN: And in -- I have outlined in my proposed substitute a number of the types of nonprofit organizations which if I read your provisions would no longer be tax exempt. If I have made a mistake, I would like to know, but I have listed a number of categories which are

based upon Title 47 of the D.C. Code, and am I correct that the ten categories -- the nine categories which I listed no longer would be tax exempt, their real estate would no longer be tax exempt?

MR. COATES: I don't --

MR. OULAHAN: I will read the categories. One is --

MR. COATES: I don't have the document.

MR. OULAHAN: All right. The first category is private nonprofit art galleries.

MR. COATES: Would not be.

MR. OULAHAN: Private nonprofit libraries.

MR. COATES: Would not be.

MR. OULAHAN: Nonprofit corporations used for purposes of public charity, and I think the example I gave was the Salvation Army.

MR. COATES: Would not be.

MR. OULAHAN: Nonprofit hospitals and the example I gave was Children's Hospital.

MR. COATES: Would not be.

MR. OULAHAN: Nonprofit schools, colleges, universities and the example I gave was Howard University. Now, although Howard is federally chartered, it is a private institution and considers itself not to be governmental. It

would not be tax exempt?

MR. COATES: It would not be.

MR. OULAHAN: Okay. Organizations chartered and declared nontaxable by Congress.

MR. COATES: We do provide "except as provided by federal law," so that the federal law provides for --

MR. OULAHAN: Okay. So my six, the Category 6 that I gave, if there was a federal statute which chartered the organization and declared it to be tax exempt, that wouldn't be nullified?

MR. COATES: No.

MR. OULAHAN: Okay. Nonprofit cemeteries?

MR. COATES: Would not be tax exempt.

MR. OULAHAN: Even though like Mount Zion they might be attached to a church?

MR. COATES: I don't think I follow the question.

MR. OULAHAN: Well, there are a number of nonprofit cemeteries in the District of Columbia. Many of the older cemeteries, like Rock Creek, Mount Zion that we have in Georgetown, and a couple of others, are attached to churches. They are not churches but they are not used for religious purposes.

MS. GRAHAM: A point of order.

MR. COATES: I guess it could be argued that for
buriels --

MR. OULAHAN: All right.

MR. COATES: -- are not for religious purposes, but
conversely you could argue that it is a religious purpose.

MR. OULAHAN: All right. And then finally --

MR. COATES: Although I guess we are required for
health reasons --

MS. GRAHAM: A point of order, Mr. Chairman.

CHAIRMAN BALDWIN: Yes, Delegate Graham.

MS. GRAHAM: I would like to say this, that we
have been here for a long time and those of us who are here,
I am sure we took off from our jobs to get here. I think we
need to go and come back at 4:00 o'clock, at the time we
said we were going to start meeting. I am not willing to
lose another group of hours, and if we go now and come back
at that time maybe we will have a quorum where we can go
right in and start doing business again. I move that we do
that.

CHAIRMAN BALDWIN: I have just received a tally
from the staff -- as you know, the staff started calling at
9:20 this morning. We have 15 delegates, in fact there are
actually 17 because two we didn't get, but I know for a fact

that two are coming. So we have 17 delegates that will not be able to attend this session prior to 4:00 o'clock, so 17 from 45 is, what, 28. Of that 28, of the remaining 28, we have at least four or five people that would have to leave sometime between now and 4:00 o'clock anyway, so I for one don't think we will get a quorum prior to 4:00 o'clock, and I am not sure we will have one at 4:00.

MR. JACKSON: Will we have a quorum at 5:00?

CHAIRMAN BALDWIN: You don't know, but yesterday we started at 4:00 and we had the quorum by 5:00, so we told everyone -- and so we got a quorum by 5:05.

MS. JACKSON: So make it 4:30, then.

MR. KAMENY: I would suggest that we instruct the staff to indicate that the time for our session is 4:00 o'clock.

CHAIRMAN BALDWIN: There is a motion on the floor and that is that we will reconvene at 4:00 o'clock, and it has been seconded.

MR. CROFT: A point of personal privilege.

CHAIRMAN BALDWIN: Sure.

MR. CROFT: I have been scheduled for the last three months to speak at a conference and I will be tied up at a conference until 4:30 at U.D.C. It is on public schools, the

history of public schools, and economic development will be the topic when we reconvene and decisions will be made and I would like to be here as the Chair of that committee and I will be speaking at the conference until 4:30. And we did not decide until last week that we would have a session beginning at the time today that we scheduled it.

CHAIRMAN BALDWIN: What time do you think you could be here?

MR. CROFT: I could be here by quarter to 5:00.

MR. JACKSON: You can be here before 5:00?

MR. CROFT: I can be here by quarter of 5:00.

MR. JACKSON: Mr. Chairman, I move that the meeting reconvene at 5:00 o'clock.

MR. KAMENY: We told everybody it would be 4:00 o'clock.

MR. JACKSON: I don't want to wait another hour. I don't want to come here at 4:00 o'clock and wait another hour. I have been waiting for six hours today. I have been here since 8:00 in the morning. I move that we start at 5:00 o'clock.

CHAIRMAN BALDWIN: Is there a second?

MR. : I second it.

CHAIRMAN BALDWIN: It has been moved and properly

seconded that we amend the original motion to read 5:00 o'clock, that we will reconvene at 5:00.

Those in favor of the Jackson amendment, 5:00 o'clock, signify by a show of hands.

(A show of hands.)

MR. COOPER: 14.

CHAIRMAN BALDWIN: Those opposed?

(A show of hands.)

CHAIRMAN BALDWIN: We will meet at 5:00 o'clock.

(Whereupon, at 11:39 a.m., the meeting was recessed until 5:00 o'clock, p.m., the same day.)

EVENING SESSION

5:47 p.m.

CHAIRMAN BALDWIN: Will the meeting please be in order.

Mr. Secretary, will you please call the roll.

Secretary Bruning called the roll as follows:

Delegate Baldwin, here; Delegate Barnes, present; Delegate Blount; Delegate Bruning, here; Delegate Cassell; Delegate Clarke; Delegate Coates, present; Deletate Cooper, present; Delegate Corn; Delegate Croft, present, Delegate Eichhorn; Delegate Feely, present; Delegate Freeman, here; Delegate Garner, here; Delegate Graham; Delegate Harris; Delegate Holmes, here; Delegate Jackson, here; Delegate Johnson, present; Delegate Jones, present; Delegate Jordan, here; Delegate Kameny, here; Delegate Lockridge, here; Delegate Long, here; Delegate Love, here; Delegate Maguire; Delegate Marcus, here; Delegate Charles Mason, here; Delegate Hilda Mason, here; Delegate Brian Moore, present; Delegate Jerry Moore; Delegate Talmadge Moore, here; Delegate Nahikian, here; Delegate Nixon; Delegate Oulahan, here; Delegate Paramore; Delegate Robinson; Delegate Rothschild; Delegate Schrag, here; Delegate Shelton; Delegate Simmons; Delegate Street, here; Delegate Terrell; Delegate Thomas; Delegate Warren; Delegate Blount; Delegate Cassell; Delegate

efp

Clarke; Delegate Corn; Delegate Eichhorn; Delegate Graham; Delegate Harris; Delegate Maguire; Delegate Jerry Moore; Delegate Nixon; Delegate Paramore; Delegate Robinson; Delegate Shelton; Delegate Simmons; Delegate Terrell; Delegate Warren.

MR. BRUNING: Mr. Chairman, there are 27 delegates present.

CHAIRMAN BALDWIN: Thank you, Mr. Secretary.

A quorum has been established.

The convention will observe a silent moment of prayer.

(Brief moment for silent prayer.)

CHAIRMAN BALDWIN: What we have before us is the Economic Development Committee, consisting of five of six articles, Mr. Chairman?

MR. CROFT: Six articles.

CHAIRMAN BALDWIN: Six articles. This morning we read six articles. This morning we answered questions to those six articles. Therefore, at this point we will move into discussion and debate on the first article.

Delegate Croft.

MR. CROFT: Mr. Chairman, I move the adoption of Section 1, Land Use Article, with the following perfecting language:

Let's move to line 3 and strike out the term "for private profit-making" and insert the phrase "in order to transfer it to another private use for profit."

CHAIRMAN BALDWIN: In order to transfer it --

MR. CROFT: In order to transfer it to another private use for profit. The rest of the sentence remains the same -- the rest of the article remains the same.

CHAIRMAN BALDWIN: We don't have to vote. The committee is just amending its own -- we will just accept that.

MR. CROFT: And with that perfected language, I move the adoption of that article.

MR. BARNES: Would you repeat it, please?

MR. CROFT: Okay. The perfecting language is to strike the phrase "for private profit making" and after the words "property shall not be taken" insert the phrase "in order to transfer it to another private use for profit," leaving the rest of the sentence the same.

MR. BARNES: I second it.

CHAIRMAN BALDWIN: It has been seconded. Is there a minority report, Mr. Chairman?

MR. CROFT: Yes, there is a minority report. There are two minority reports, one of which substitutes a general

welfare clause for all six articles of the committee.

CHAIRMAN BALDWIN: There are two minority reports?

MR. CROFT: Yes, there are two minority reports, one of which, sponsored by Delegate Cooper and Delegate Long, substitute one general welfare clause for each of the six articles developed by the committee.

CHAIRMAN BALDWIN: Okay. That in fact would be a substitute for the six articles. The others are the Corn amendment then, consisting of several amendments?

MR. CROFT: Right, and there is an amendment, the Corn amendment that deals with Section 1, land use.

CHAIRMAN BALDWIN: Thank you.

Delegate Coates.

MR. COATES: Do I understand correctly, Mr. President, that we do not have to consider again this minority report on subsequent motions to adopt articles of the Economic Development Committee, that is that it will be disposed of with respect to Article 1, that has to be considered with respect to the succeeding Articles 2 through 6?

CHAIRMAN BALDWIN: If the minority report, as I read it, the first one, not the Corn, the one by Long and Cooper, if as I understand it, it is for all six articles, the only proper place for that is at the end of the floor,

would be number one when we read, when your committee reads the first section, they may enter it on the record but they can only properly deal with it as far as approval is concerned which is at the end of the discussion of all six articles, we then in fact ask for adoption and I would imagine the sponsors of that article would then raise that same question again and try to get theirs adopted for the committee's report for all six articles. So that will be the procedure.

MR. CROFT: There is a second minority report submitted by Delegate Corn that offers a series of amendments to Section 1.

CHAIRMAN BALDWIN: The Corn amendment is in fact part of the report, and even though she is absent, this body will have to deal with it, so you can instruct someone from your committee to read the Corn amendments as we go along.

MR. CROFT: Okay. I will do it myself.

CHAIRMAN BALDWIN: I will ask the Secretary. Mr. Secretary, would you read section by section the Corn amendment.

MR. LONG: Mr. Chairman.

CHAIRMAN BALDWIN: Mr. Long.

MR. LONG: On procedure, do I read the minority report endorsed by Cooper and myself into the record at this

point?

CHAIRMAN BALDWIN: I would suggest that you do it.

MR. LONG: Okay. Is it proper right now?

CHAIRMAN BALDWIN: Sure.

MR. LONG: As I understand it, I will read this now and then it will be moved at the end of the debate on the whole set of articles as a substitute for them if we at that time still wish to move it.

The proposed article says, "The general welfare. The legislature is empowered to provide for the general welfare of all the citizens of the state by passing laws and appropriating funds for purposes concerned with but not limited to labor, health, environment and natural resources, water, land use, energy, utilities, transportation, finance, corporations, unincorporated enterprises, cooperative associations, and other matters affecting the general welfare."

CHAIRMAN BALDWIN: It has been so entered into the record, Delegate Long.

Will the Secretary read the minority report for Section 1, Delegate Corn's amendment.

MR. BRUNING: This is the minority report, Section 1, lines 3, 4 and 5, put a period after the word "profit-making" and omit the rest of lines 3, 4 and 5. That is the

minority report from Delegate Corn.

Section 1 now reads, "Eminent domain. Private property shall not be taken or damage for public purpose without just compensation. Private property shall not be taken for private profit-making."

CHAIRMAN BALDWIN: Is there a second? Is there a second for the Corn amendment?

(No response)

The Corn amendment is lost or denied for want of a second.

Mr. Long, one of the committee members just approached and states that he thinks it would be better -- and I don't know how you feel about it -- for the body to deal with your amendment now, at the beginning. It doesn't matter to the Chair, either now or at the end.

MR. LONG: I think it would probably be most appropriate at the end so that the committee's report can get a full hearing, the convention can decide whether or not upon the basis of the amendments to it whether it is satisfactory or not.

CHAIRMAN BALDWIN: Okay. It will remain where it is.

MR. COOPER: Now I might raise a question of the

Chair, and that is that if we were to proceed with it article by article, that we postpone the full adoption of each article after it is amended so that we can adopt all six articles on the whole so that that would afford us the opportunity of offering our minority reports where upon no previous articles would have already been adopted.

CHAIRMAN BALDWIN: Well, we will adopt all of them at one package anyway, so that would not affect your amendment.

MR. COOPER: No, because once we adopt one of these articles, then we would not be able to reconsider it, we would not be able to substitute --

CHAIRMAN BALDWIN: It is not a matter of reconsidering. I think you recall the night before last, we did in fact adopt one and then prior to the adoption of the whole thing there were some changes made.

MR. COOPER: No, that was -- this is the first case where we have had more than one article. Now, if we adopt the very first article --

MR. JACKSON: A point of order.

CHAIRMAN BALDWIN: A point of order has been called for. Delegate Jackson.

MR. JACKSON: It seems like for the last three or four days, especially during the times when we have moved

and got to be published, we have gone section by section of articles and approved them. It has nothing to do with whether or not they have a report. Therefore, they do not do something article by article or section by section but for the whole article. So it is a complete waste of my time and their time and the body to try to keep us from adopting anything until they are ready to put up an argument on the floor is completely out of order and opposed to what we have been doing, enabling us to handle these questions in a very speedy manner.

CHAIRMAN BALDWIN: So your suggestion is that we leave it where it is, at the end of the --

MR. JACKSON: Right. That is what the minority report wants, to go along and adopt each part of this thing section by section as we go along.

CHAIRMAN BALDWIN: Okay. That was the original order from the Chair and it will remain as is. I will ask Delegate Croft to proceed with Section 2.

MR. CROFT: Section 2 --

CHAIRMAN BALDWIN: I'm sorry, we have another amendment to Section 1. Delegate Oulahan, did you have an amendment to Section 1?

MR. OULAHAN: I have handed to the amendment clerk

a proposed substitute for the amendment made by the Chairman of the committee. My amendment is that the second sentence of Section 1 be deleted.

MR. CROFT: The second section, section 1.

CHAIRMAN BALDWIN: Is there a second?

MR. : I second it.

CHAIRMAN BALDWIN: It has been moved and properly seconded that the -- now, you are speaking strictly to the words "in order to transfer"?

MR. OULAHAN: No, sir. I am moving that the entire sentence be deleted for the following purpose: That sentence goes far beyond the meaning --

CHAIRMAN BALDWIN: The sentence that begins on line 2?

MR. OULAHAN: Strike everything commencing with "Private property shall not be taken" all the way until the end of "possible." That is why I said strike the second sentence. The reason for it, Mr. Chairman, is that eminent domain is not ordinarily so restricted as is provided in this sentence. I think this sentence would tie the hands of the new state in engaging in eminent domain activities. I think it would make it impossible for the state to carry out many of the projects and duties that it has. I realize, of

course, the basis for the sentence. The sentence is there because of some of the sweetheart deals that have gone on between city hall and the developers in this city, but I think there are other ways to get at that kind of a situation than restricting the city's right to eminent domain. I am quite sympathetic to the problem.

Thank you.

CHAIRMAN BALDWIN: We have heard the motion and it has been seconded and the maker of the motion has given us his rationale for it. Discussion? Delegate Kameny?

MR. KAMENY: I along with a number of other delegates, feel that the right of eminent domain in fact should most certainly be restricted in this fashion and I urgently feel very strongly about it. I know of at least some of the delegates who feel the same. I am not going to argue about precise wording here, but I certainly feel that the restriction in principle should be had, just the kind that is articulated in the last part of this sentence and therefore I urge that the proposed amendment be voted down.

CHAIRMAN BALDWIN: Delegate Rothschild.

MR. ROTHSCCHILD: I have a question on the --

CHAIRMAN BALDWIN: You must speak strictly to the amendment, the primary amendment on the floor is the Oulahan

amendment and not on anything --

MR. ROTHSCHILD: I am speaking to it --

CHAIRMAN BALDWIN: Well, you can't ask the Chair then. You speak to the Oulahan amendment.

MR. ROTHSCHILD: I am speaking to it.

CHAIRMAN BALDWIN: Okay.

MR. ROTHSCHILD: As a part of speaking to it is trying to find out some information. The second part of the sentence which is dropping says it is clear that --

MS. : Can you speak a little louder?
We cannot hear.

MR. ROTHSCHILD: The second part of the sentence says that it is clear that no alternative needs are serving such public purpose is possible. I would like to know how the committee saw that second part of the sentence fitting in with Section 6, which speaks to public land acquisition. Could there be created a problem in that section, because if you are going to collect parcels of land somebody can easily come up and say, hey, you know, you don't have to get my land, there is another way to do this, and it could interfere with section.

MR. CROFT: Can I respond to that question?

CHAIRMAN BALDWIN: Yes, you may.

MR. CROFT: Number one, the question you raise only deals with the second part of Section 1, which now reads "Private property shall not be taken in order to transfer it to another private use for profit." It doesn't refer to the state taking property for public use. In other words, the last part of that sentence, it is clear that no alternative means serving such public purpose is possible, applies to the sentence in which it is in. It does not apply to the above sentence, which talks about private property shall not be taken or damaged for public purpose without just compensation. So that would not apply to Section 6 of the article because Section 6 talks about the state acquiring land --

CHAIRMAN BALDWIN: Thank you.

MR. CROFT: -- the state acquiring land and the state will hold it and own it.

CHAIRMAN BALDWIN: So your response is it does not apply.

Is there further discussion on the Oulahan amendment?
Is there further discussion on the Oulahan amendment?

(No response)

Having heard none, the Chair -- does the committee want to respond?

MR. CROFT: Yes, I would like to respond, but if

there is another member that would like to respond, I will defer to that member.

CHAIRMAN BALDWIN: Thank you.

MR. CROFT: Okay. Number one, the phrase "Private property shall not be taken or damaged for public purpose without just compensation," that is indeed a standard line, a standard interpretation, but it is important that that is not the only language you find in state constitutions. Indeed, Mr. Oulahan's comments are erroneous in the sense that at least two-thirds of the constitutions have a much more restrictive definition than the one offered here.

For example, Arizona's says that you cannot take private property for private use, short and simple, without anything -- now, let me give a history on this. Until the 1950's, the courts had up until that time ruled that when the federal government this time acquires private property, public purpose meant that the state would own what was put on the land. In 1950, a department store in the southwest challenged a southwest urban renewal project, arguing that the federal government intended to take private property and transfer it to another private person for their use. The Supreme Court ruled in their favor. The Supreme Court gave an extremely elastic definition of public purpose. The

Supreme Court essentially ruled that the state had to meet the reasonable test that a public purpose would be satisfied.

If this statement remains, if this section would remain, with "Private property shall not be taken or damaged for public purpose without just compensation," we have given the state a blank check, a blank check, because public purpose -- because when the state argues public purpose, it only has to meet the test that there is a reasonable probability that the public purpose will be met as the state defines the public purpose. So in that sense, it defines no guarantee for anyone.

CHAIRMAN BALDWIN: Are you ready for the question? Those in favor of the Oulahan amendment, signify by raising your hands.

(A show of hands.)

MR. BRUNING: 2.

CHAIRMAN BALDWIN: Those opposed, likewise.

(A show of hands.)

MR. BRUNING: 19.

CHAIRMAN BALDWIN: Abstension?

MR. BRUNING: 4.

CHAIRMAN BALDWIN: The Oulahan amendment is rejected.

Mr. Chairman, you may proceed.

MR. CROFT: I move that we adopt Section 1.

MR. : I second it.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt Section 1. Those in favor signify by "yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Those opposed, "nay."

(A chorus of "nay.")

CHAIRMAN BALDWIN: Abstension?

(No response)

CHAIRMAN BALDWIN: Section 1 has been adopted.
Section 2.

MR. CROFT: Mr. Chairman, I move the adoption of Section 2 of the article Land Use, Comprehensive Land Use Plan.

MR. : I second.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt Section 2. Does the Corn minority report have an amendment to that section?

MR. CROFT: No, it doesn't. It applies to Section 3.

CHAIRMAN BALDWIN: She says line 15, Section 2, add the words "to the public" to the end of the sentence.

Is there a second to that amendment?

MR. CROFT: It is already there. I think that she wrote this before --

CHAIRMAN BALDWIN: It is already there? Okay. So the committee has adopted that. Okay.

Discussion on Section 2? Delegate Long, Delegate Garner, and Delegate Rothschild.

MR. LONG: I want to speak against adoption of this section. This section, along with the next two or three sections, essentially basic legislation can be found in the most urban jurisdictions of the United States. The material here is unexceptional, unnecessary and unduly weighs down the constitution with what is legislative material which will have limited applicability. Some of it has -- well, this particular section, however, is continuous, it has a long life; other parts of this have a very limited application.

We should try to write as simple a document as possible, keeping to strictly the constitutional issues, rather than to legislative issues which are going to tie knots in the future legislature which we have created.

CHAIRMAN BALDWIN: Delegate Garner.

MR. GARNER: Mr. Chairman, I also rise in opposition to this section, and I do so as a citizen who has been very

active in land use and planning and zoning issues, and I would like to extend my remarks to include those of Delegate Long, but not only does it burden this document, it provides nothing of substance. There are no standards for a comprehensive plan. It provides for a ten-year plan. If you are talking about plans, you have got to be talking at least about twenty-five years. There is really nothing there that protects citizens, it doesn't guide the legislature or the Executive, and it doesn't give the people who are really concerned about land use planning any real protection or any real guidance.

If you are going to add language, if you are going to put in standards, do it, but not anything as vacuous, with all due respect to the committee, as is in this language.

Thank you.

CHAIRMAN BALDWIN: Delegate Rothschild and Delegate Jones.

MR. ROTHSCCHILD: A question for the committee: I am not so much opposed necessarily to land use planning being in the constitution, but why did the committee not have a section that would be a subsection under such as comprehensive development planning, which would include jobs and population planning, housing, and a much broader sense of

— planning, rather than just going to land planning, because I see nothing in the article that --

- MR. CROFT: First of all, if you read the committee report and the committee report is a section-by-section committee report, the committee report defines what we mean by comprehensive land use plan, and it is quite clear when it speaks to the fact that we are not talking about a land use plan in the sense of bricks and mortar and trees and grass as necessary as bricks and mortar and trees and grass are, but what we are talking about is indeed a comprehensive plan, and a comprehensive plan, if you read the committee report, speaks to questions of economic development, it speaks of questions of social development, it speaks of the cultural development.

So we are not just talking about bricks and mortar and all of your opposition -- what I am saying is that your concerns are covered in our report, in our definition in our report.

CHAIRMAN BALDWIN: Delegate Jones and Delegate Jackson and Delegate Mason, Charles Mason.

MS. JONES: I would like to rise to support Section 2, and my reason for doing this is because in the past the Zoning Commission has been under a heavy mandate to come up

with a comprehensive land use plan before they changed the land use plan, and they have not done that. They violate that every time they give an exception or they change the zoning here in the city. That has a purpose and the citizens of this city understand that. So it is important because it seems to me that the citizens ought to have a right to have a plan before we talk about changes.

CHAIRMAN BALDWIN: Delegates Jackson, Mason and Delegate Love.

MR. JACKSON: I must admit that I think it is a weak argument to state that one paragraph adds -- we are talking about one paragraph that has nothing to do with substance. It seems to me, Mr. Chairman, that the substance of this responds to an initiative that we have seen in this city. For instance, the Board of Trade has a use plan for the year 2000 which says by the year 2000 this will be a white city. Let's make it clear, that is what it says, that people like me and others here will be out of this city. They have the plans.

What this says to me, Mr. Chairman, is that the city shall have the authority and shall in fact develop a plan that will meet the needs of the people and that the people themselves have the right to participate in the

formation of this plan. If this is what one paragraph says here, then I am definitely in favor of putting that in so that we will know what would happen in the near future, especially in ten years or so forth.

CHAIRMAN BALDWIN: Delegate Mason.

MR. MASON: Just an editorial matter. Since neighborhoods in lines 11 and 12 is plural, the word "focus" in line 13 is singular and refers back, it seems, and it should be plural.

MR. CROFT: That is perfectly sensible.

CHAIRMAN BALDWIN: Delegate Love.

MR. LOVE: I would like to support this and I would also like for the public record, for you to read the definition of neighborhoods so it is very clear, not only in your report but to anyone reading the transcript what we mean when we vote for this, what we mean by neighborhoods.

MR. CROFT: Okay. Do you want me to read it?

MR. LOVE: Yes.

MR. CROFT: And it is in our committee report and it says, "Neighborhoods refer to residential areas and adjacent shopping and cultural areas." We are talking about, you know, the residential communities of the state.

CHAIRMAN BALDWIN: Delegate Feeley and Delegate

Marcus and Delegate Street.

MS. FEELEY: I wanted to ask the committee if you are all opposed to the language that you have in your report being added to Section 2. I am looking at the report from General Counsel, which indicates that it may possibly be desirable to expressly state what you have said in your report, which is "The plan shall guide the action of all state agencies and commissions, including a Zoning Commission."

(2-B)

MR. CROFT: Okay. I intended to add that we have perfecting language, if we ever got to it and the -- at the end of page 2, line 13.

MS. FEELEY: Thank you.

DELEGATE BALDWIN: Delegate Marcus.

MR. MARCUS: I do strongly support this particular section, actually this entire report of the committee. I especially strongly support this particular section. One of the reasons I strongly support this particular section is that it does in fact do something very different. What it does is that it begins to focus on the neighborhoods, the kind of planning that needs to take place for this particular state. It is responsive, it is very responsive to the kind of state this must be. It moves away from the traditional -- in a perfectly acceptable source, and something

that has been done many times before, has not been done here, and should be done here, it moves away from the traditional focus on the central business district and focuses where people live and where people spend most of their time. It does concern itself with the kinds of issues that Delegate Jackson raised from the floor a little while ago.

I think not only is this an important piece but for the survival of the state in a socially and economically cohesive fashion, it is almost essential. Thank you.

CHAIRMAN BALDWIN: Delegate Street.

MS. STREET: I'm sorry, Delegate Feeley has spoken to the point that I was going to make.

CHAIRMAN BALDWIN: Thank you. We have heard from eleven delegates and I think at this point, if by general consensus we are ready to terminate debate, we are ready to vote.

The question has been called for. Those in favor, of adopting Section 2, as amended, signify by a show of hands.

(A show of hands.)

MR. BRUNING: 17.

CHAIRMAN BALDWIN: 19 for. Those opposed?

(A show of hands.)

MR. BRUNING: 6.

CHAIRMAN BALDWIN: Abstension?

MR. BRUNING: 3.

CHAIRMAN BALDWIN: Section 2 has been adopted.

MR. CROFT: Mr. Chairman, I move the adoption of Section 3, Citizens Advisory Planning Commission, with the following perfecting language: Line 13, following -- I'm sorry, I am at the wrong place. Excuse me.

CHAIRMAN BALDWIN: So your motion is to adopt Section 3 without any changes?

MR. CROFT: Yes, it is. I'm sorry, line 4 and 6, strike lines 4 through 6 and add -- in line 4, "The Executive shall determine the size of the Commission," and put a period there, and after that a new sentence, "The legislature shall determine the terms of office of members and establish their rate of compensation, if any."

So let me read it again: Line 4 shall read, "The Executive shall determine the size of the Commission and appoint its members." Then a new sentence which says, "The legislature shall determine the terms of office of members and establish their rate of compensation, if any."

CHAIRMAN BALDWIN: Are there any questions regarding the amendment?

MS. : Is that a committee change?

MR. CROFT: Yes, a committee change.

CHAIRMAN BALDWIN: Yes, that is a good question.

MR. CROFT: When I use the word "perfecting language," that means I've got a majority of the committee.

CHAIRMAN BALDWIN: Okay. Delegate Jackson, did I see your hand?

MR. JACKSON: Does that mean you don't want "The Commission's membership" and this other stuff at the bottom? You don't want that? Does that mean the bottom line is in or out?

MR. CROFT: I'm sorry, everything else remains the same.

CHAIRMAN BALDWIN: Delegate Brian Moore.

MR. B. MOORE: Why did you split the function between the Executive and the legislature?

MR. CROFT: Well, it is because of the argument that has been made on this floor from time to time about the Executive appointing friends and cronies and being able to give them unlimited salaries, and we decided that we would yield to the folks that make that in hopes of picking up your votes.

CHAIRMAN BALDWIN: We do have a minority report from

Delegate Corn. We will ask the Secretary to read it, the minority report for Section 3.

MR. BRUNING: Section 3, on lines 1, 4, 5, 6, 7 and 8, change the word "Executive" to "Legislature" and omit in line 4 and thereafter everything after the word "plan." Section 3 shall now read "Citizens Advisory Planning Commission. The Legislature shall establish a Citizens Advisory Planning Commission to guarantee citizen participation in the development of the land-use plan."

CHAIRMAN BALDWIN: Is there a second to the Corn amendment? Is there a second to the Corn amendment?

(No response)

Having heard none, the Corn amendment has been rejected.

Are there other amendments to Section 3? Delegate Love has an amendment.

MR. LOVE: Would you read it?

MR. BRUNING: Yes, line 4, "The Executive shall appoint at least one resident from each legislative district."

MR. CROFT: Is that going in Section 4?

MR. LOVE: Line 4.

MR. CROFT: Line 4, I'm sorry.

MR. LOVE: Line 4, Section 3.

CHAIRMAN BALDWIN: Line 4 of Section 3. Delegate Love, would you speak to your amendment?

MR. LOVE: Mr. President, as you noticed, our counsel and other people have noticed that the last sentence talks about geographical section is kind of loose and not very clear. I think we should have somebody representing every legislative district that results in an assurance that every neighborhood and every legislative district is represented when it came to deciding this comprehensive land use plan.

So what I have suggested is to just have the Executive appoint somebody from each legislative district and then we would omit the last sentence about geographical section of the state. I picked "legislative district" because it seemed to me that, one, a 40-member commission is not unusually large in the district; and, two, guaranteeing distribution throughout the state; and, three, I couldn't come up with any other unit. It seems to me better if we use legislative districts.

CHAIRMAN BALDWIN: Is there further discussion of the Love amendment? Delegate Moore, Talmadge Moore.

MR. T. MOORE: I want to compliment Delegate Love, first of all. (inaudible)

CHAIRMAN BALDWIN: Delegate Garner and Delegate Brian Moore and Schrag.

MR. GARNER: Once again, if somebody asked me if there is a land use planning issue, I would have to point out that it is very difficult to develop a plan where the neighborhood is the focus of the development of the plan at the same time you have a statewide citizens advisory commission. Now, either you are developing neighborhood plans that protect the integrity of neighborhoods or you are developing a statewide plan. You have got to make up your minds, this language, the language in the previous section, and the language in the following section is a jumble of confusion and the whole thing ought to be deleted, it provides nothing but an additional appointment by the Executive.

CHAIRMAN BALDWIN: Delegate Brian Moore.

MR. B. MOORE: Just a question of Delegate Long. He mentioned that 40 members of this committee is normal for the District of Columbia. Is that --

MR. LOVE: Well, there have been several commissions. For example, there is the Downtown Development Commission that is larger than this and there are several commissions. There is one now on law and order that has 60 people. This is not an unusually large commission. There are smaller

commissions. But this is an extremely important issue in my neighborhood, for example, and the people understand that they will have this by legislative district then they will be much more comfortable in the legislative districts also.

CHAIRMAN BALDWIN: Delegate Schrag.

MR. SCHRAG: I have a question for Delegate Love. Does your amendment include deleting the last sentence or does it --

MR. LOVE: Yes, essentially, yes.

MR. SCHRAG: So if we approve your amendment, we don't also have geographical representation, so we clarify it to make it legislative districts?

MR. LOVE: Yes.

CHAIRMAN BALDWIN: Is there further discussion on the Love amendment?

MR. CROFT: The majority of our committee would accept that amendment.

CHAIRMAN BALDWIN: Will accept it?

MR. CROFT: Yes.

CHAIRMAN BALDWIN: Okay. The Love amendment has been accepted by the committee.

I'm sorry, Delegate Jackson?

MR. JACKSON: I call for the question.

MS. : I second it.

CHAIRMAN BALDWIN: It has been moved and seconded that we close debate on the Love amendment because the committee has accepted it. It isn't necessary, Delegate Rothschild, because the committee has accepted it and there is nothing to debate on. They have accepted it. We met the rule of two as far as people participating in calling for the question.

MS. EICHHORN: Point of information.

CHAIRMAN BALDWIN: Delegate Eichhorn, a point of information.

MS. EICHCHORN: If the committee accepts the amendment, does that mean that if one opposes the amendment has to oppose the entire section?

CHAIRMAN BALDWIN: Delegate Croft?

MR. CROFT: Probably, or one could further a further amendment.

MR. SCHRAG: Mr. Chairman.

CHAIRMAN BALDWIN: Delegate Schrag.

MR. SCHRAG: As far as this parliamentary point, the normal procedure under Robert's Rules is that once the amendment has been made, it actually has to be voted on. I think it is a good idea to let the committee accept the

amendment to save time, but if a member objects perhaps that member could offer a motion to delete that section in those cases where somebody objects to the committee accepting something. That way most of the time it will save time because the committee will accept it and nobody would object, but if somebody does feel strongly they can get a vote on it by moving to strike that section.

CHAIRMAN BALDWIN: That was the purpose and I didn't see anyone objecting to it.

Those in favor of the amendment, the Love amendment, signify by saying "yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Those opposed, "nay."

(A chorus of "nay.")

CHAIRMAN BALDWIN: A show of hands, please, those for "yes." All "yes," a show of hands.

(A show of hands.)

MR. BRUNING: 18.

CHAIRMAN BALDWIN: Those in opposition?

(A show of hands.)

MR. BRUNING: 10.

CHAIRMAN BALDWIN: Abstension?

MR. BRUNING: One.

CHAIRMAN BALDWIN: The Love amendment is adopted.
Delegate Croft.

MR. CROFT: I move the adoption of Section 3 --

MR. LOVE: I have another amendment.

MR. CROFT: Another amendment?

MR. LOVE: From Oulahan and from Love, strike
language in lines 6 through 8.

MR. CROFT: We have done that.

CHAIRMAN BALDWIN: Delegate Oulahan, would you
respond? Do you consider your amendment as being moot at this
point?

MR. OULAHAN: Mr. Chairman, I move the deletion of
the last sentence, for the reason that I do not understand
exactly --

MR. CROFT: That was already done.

CHAIRMAN BALDWIN: Just one second, please. Mr.
Croft, has the language been deleted?

MR. CROFT: Yes.

CHAIRMAN BALDWIN: Delegate Oulahan --

MR. OULAHAN: I withdraw my amendment now.

CHAIRMAN BALDWIN: So the amendment has been with-
drawn.

Delegate Schrag.